Office - Supreme Court, U. S.
FEB 16 1945
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1944.

No. 1016

UNITED STATES ALKALI EXPORT ASSOCIATION, INC.,
PITTSBURGH PLATE GLASS COMPANY (INC.),
CHURCH & DWIGHT CO., INC.,
DIAMOND ALKALI COMPANY (INC.),
DOW CHEMICAL COMPANY, INC.,
HOOKER ELECTROCHEMICAL COMPANY (INC.),
THE MATHIESON ALKALI WORKS, (INC.),
NIAGARA ALKALI CO.,
PENNSYLVANIA SALT MANUFACTURING CO.,
SOUTHERN ALKALI CORPORATION,
WESTVACO CHLORINE PRODUCTS CORPORATION, INC.,
WYANDOTTE CHEMICALS CORPORATION, *Petitioners,*

v.

UNITED STATES OF AMERICA, *Respondent.*

On Motion for Leave to File Petition for Writ of Certiorari to the District Court of the United States for the Southern District of New York.

REPLY BRIEF FOR PETITIONERS, UNITED STATES ALKALI EXPORT ASSOCIATION, INC., ET AL.

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Of Counsel.

February 16, 1945.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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I.

In the Government's argument it is first suggested that this Court might well be more slow in the issuance of writs under Section 262 of the Judicial Code (28 U. S. C. Sec. 377) to District Courts than it would be in the issuance of

such writs to Circuit Courts of Appeal. It is not suggested that there is a lack of power to issue such writs to District Courts.

On principle, there can be no distinction between the issuance of the writ in the two cases. Under the Expediting Act (15 U. S. C. Sec. 29), no appeal would lie to a Circuit Court of Appeals, and relief in the nature of appellate review must be sought, if at all, in this Court.

II.

The underlying purpose of the Expediting Act, as its name implies, was "to insure speedy disposition of suits in equity brought by the United States under the anti-trust acts", *United States* v. *California Cooperative Canneries*, 279 U. S. 553, 558. The principle ground upon which we submitted our motion was addressed to precisely this consideration of speed of disposition.

It is significant that the Government does not at any point dispute that the proceedings in this case in the Court below would necessarily be lengthy and the date of final appeal be long deferred.

III.

Of course, we fully recognize that our motion is not to be lightly granted. It must be an unusual case in which this Court exercises this unusual power of review.

But the Government agrees that the question presented "is a significant one", and is a question of jurisdiction of the Court below to entertain the case at all.

IV.

Two minor practical considerations mentioned in the Government's brief remain to be noticed.

First. That the case is the first of its character to arise in twenty-five years under the Act, would be significant only

if the Government were suggesting that the Attorney General does not intend to bring any further cases of similar character. On the contrary, it has been widely reported in the press within the last week that further suits of precisely the same character were imminent, and we do not understand that the Attorney General, having now become of opinion that there is jurisdiction, does not intend in the future to exercise it.

Second. The Government suggests that elements of the "significant" issues to be presented to this Court in this case would require determination (i) whether jurisdiction of the District Court is barred as to all of the subject matter of the complaint or only a part, and (ii) whether it is barred as against the export trade associations only or as against all the defendants.

This also seems to us a reason in favor of the exercise of the Court's power. These are just such issues as are to be anticipated in any Webb-Pomerene Act case.

V.

In conclusion, we point out that the Government appears to be in agreement with us that the question is a significant one and that the Court has power to review it in the manner requested. The Government's opposition is based not upon a showing that the enforcement of the law would be prejudiced by such review, but merely upon the Government's own view as to what this Court may consider to be a necessary precaution against profligate applications for similar relief in other cases.

Our submission is that in a case of significant importance, presenting a novel and fundamental question of jurisdiction as between the Courts and a Federal Commission, this Court will find an apt occasion in the general interest to exercise a power which the Government itself admits has been often exercised in cases of lesser importance, and that the Court will not be deterred from performing

its function in a deserving case because of concern lest there may result an increase in the number of applications in undeserving cases.

Respectfully submitted,

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